TERRY GODDARD
Arizona Attorney General
Firm State Bar No. 14000

NANCY M. BONNELL, #016382
Antitrust Unit Chief
SUSAN V. MYERS, #021949
Assistant Attorney General
Antitrust Unit, Consumer Protection
& Advocacy Section
1275 West Washington
Phoenix, Arizona 85007-2997
Telephone: (602) 542-7728
Facsimile (602) 542-9088

Attorneys for Plaintiff

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

STATE OF ARIZONA, EX REL. TERRY GODDARD, ATTORNEY GENERAL, Plaintiffs, v. GANNETT CO., INC.; CITIZEN PUBLISHING COMPANY; LEE ENTERPRISES, INCORPORATED; STAR PUBLISHING COMPANY; and TNI PARTNERS, Defendants.	Case No.: _____ **MEMORANDUM SUPPORTING PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION** ORAL ARGUMENT REQUESTED

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

Page

STATUTES

OTHER AUTHORITY

INTRODUCTION

Plaintiff brings this motion for a temporary restraining order and preliminary injunction to preserve competition between the *Tucson Citizen* and the *Arizona Daily Star* – competition that has benefitted Tucson-area newspaper readers for more than a century by giving them the choice of two high-quality daily local newspapers. The owners of those newspapers plan to eliminate that competition by closing the *Citizen* on May 15, 2009 and sharing the profits generated by the *Star* after it becomes Tucson's monopoly daily local newspaper. This agreement to stop competing plainly violates the antitrust laws, and it will cause irreparable harm. Unless this Court enters an order preventing the *Citizen* from closing, Tucson-area readers will lose not only one of their daily local newspaper choices, but also the historic quality competition that has spurred the *Star* and *Citizen* to journalistic excellence.

Ninth Circuit courts consistently have held that an agreement between two newspaper owners to close one of their newspapers can violate the antitrust laws. *See Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1203 (N.D. Cal. 2000); *Hawaii v. Gannett Pacific Corp.*, 99 F. Supp. 2d 1241, 1248-52 (D. Haw.), *aff'd*, 203 F.3d 832 (9th Cir. 1999) (table). Courts also have recognized that such owners may avoid antitrust scrutiny if they can first show that the newspaper to be closed qualifies as a "failing company." That defense requires them to prove that (1) the newspaper's resources are so depleted and its prospects for rehabilitation are so remote that it faces the probability of business failure; and (2) there are no prospective purchasers. *See Reilly*, 107 F. Supp. 2d at 1203. The owners of the *Citizen* and the *Star* cannot make these showings. The newspapers have consistently turned a profit, last year earning $16.5 million combined. Additionally, another newspaper company has offered to pay $250,000 for all the assets the *Citizen*'s owner is willing to sell, and that company intends to compete against the *Star* on price as well as quality. The *Citizen*'s owner has rebuffed this bidder, and its readiness to sacrifice cash in hand to prevent anyone else from publishing the *Citizen* confirms that its ultimate goal is to prevent competition and share in the *Star*'s monopoly profits. Rather

than sell the *Citizen* to a ready buyer, the owners of the *Citizen* and the *Star* plan to close the *Citizen* in only two days.

Requiring the *Citizen* to continue publication will not significantly harm Defendants, whose Tucson newspapers have been consistently profitable, but closure will cause irreparable harm. If Defendants are allowed to shut down the *Citizen*, any trial will come too late to revive the newspaper after relationships with employees, distributors, advertisers, and the roughly 20,000 consumers who value reading the *Citizen* have been irretrievably severed. Tucson newspaper readers will lose the choice between two daily local newspapers and the benefits of continued quality competition not only pending a trial on the merits, but for all time. Only an injunction against closing the *Citizen* will protect the people of Tucson.

STATEMENT OF FACTS

The *Tucson Citizen*, published for afternoon delivery Monday through Saturday, employs about 60 people in its newsroom and has an average daily circulation of about 20,000 readers. Confidential Mem. 3, 6 (Ex. A). Gannett Co., Inc. ("Gannett") owns the *Citizen* through a wholly owned subsidiary, Citizen Publishing Company ("CPC"). *Id.* at 3. Tucson's only other daily local newspaper is the morning *Arizona Daily Star*. Lee Enterprises, Incorporated ("Lee") owns the *Star* through a wholly owned subsidiary, Star Publishing Co. ("SPC"). Gannett and Lee (the "Newspaper Owners") jointly own the printing presses and other hard assets used to produce both newspapers.

Since 1940, the two newspapers have had a joint operating agreement ("JOA"), under which their news and editorial departments have operated separately, but all other aspects of their operations – including printing, distribution, and sales – have been delegated to a jointly owned agent, currently TNI Partners ("TNI"). *See* Joint Operating Agreement §§ 2.1, 2.3 (Ex. B). Through their subsidiaries, Gannett and Lee each own a fifty percent interest in TNI, and they have equal rights to the profits from TNI's operations and to appoint members of TNI's Board of Directors. *See* Partnership Agreement §§ 2.1, 2.3, 3.1 (Ex. C). Though the JOA has preserved the competition

between the *Citizen* and the *Star* to attract readers through high-quality journalism, competition over advertising and subscription rates has ceased.

In 1965, the United States brought an antitrust case challenging the elimination of that price competition and won a judgment, which the Supreme Court affirmed. *See Citizen Publishing Co. v. United States*, 394 U.S. 131 (1969). Following that litigation, Congress created a limited antitrust exemption for certain JOA activities if the JOA partners preserve editorial competition between their newspapers. *See* Newspaper Preservation Act, Pub. L. No. 91-353, 84 Stat. 466 (1970) (codified at 15 U.S.C. §§ 1801-1804 (2008)). This exemption covered TNI as long as the Newspaper Owners continued to publish both the *Citizen* and the *Star* and maintained editorial competition between them.

With this exemption, which has allowed the Newspaper Owners to engage in conduct like price fixing that would otherwise violate the antitrust laws, TNI has become very profitable. It made more than $30 million in profits each year between 2004 and 2007. TNI Operating Statement (Ex. D).[1] Even in 2008, TNI's profits from the *Citizen* and the *Star* were $16.5 million, and its profit margin still exceeded 19%. *Id.*

Not content with these profits, Gannett and Lee plan to close the *Citizen* and cease all remaining competition. *See* Schmidt Dep. 59:2-68:10 (Ex. E); Ehrman Dep. 105:21-119:22 (Ex. F). Upon learning of their intentions on October 31, 2008, the Department of Justice opened an investigation. In a letter dated January 15, 2009, the Newspaper Owners confirmed that the *Citizen* would close on March 21, 2009, unless Gannett sold its masthead, website, archives, subscriber list, and other mostly intangible assets (collectively, the "*Citizen* assets") in the meantime.[2] January 15 Letter (Ex. G); *see*

---

[1] Ex. D is a printed portion of a very large electronic spreadsheet that TNI has designated as "TNI-00009259." If it would assist the Court, the State will provide the entire spreadsheet in printed and/or electronic form.

[2] Gannett later decided to continue publishing the *Citizen* until [May 9], 2009. *See* [Lang correspondence specifying shut-down date] (Ex. H).

also Confidential Mem. 1-2 (Ex. A) (describing the *Citizen* assets). Gannett did not offer to sell its fifty percent interest in TNI or the printing presses and other assets used to produce the *Citizen* and the *Star*. Gannett informed subscribers, advertisers, employees, and other members of the public of the plan to stop publishing the *Citizen* in a January 16, 2009 press release. *See* Press Release (Ex. I). After Gannett ceases publishing the *Citizen*, Gannett and Lee will split equally the profits generated by the only remaining daily local newspaper in Tucson, the *Star*. January 15 Letter (Ex. G).

Santa Monica Media Company, LLC ("Santa Monica Media") – another newspaper company – offered to pay Gannett either $250,000 immediately or $400,000 over time for the *Citizen* assets. Hadland Decl. ¶¶ 1, 10, 14 (Ex. J). Gannett demanded that Santa Monica Media increase its bid to $800,000, and it broke off negotiations when Santa Monica Media declined to do so, even though it will receive nothing for the *Citizen* assets if the plan to close the newspaper succeeds. *See id.* ¶ 10. If the *Citizen* stops publication, Santa Monica Media would lose interest in purchasing the *Citizen* assets because relationships with subscribers and advertisers will be disrupted, making it extremely difficult to revive the newspaper. *Id.* ¶ 16. Even after Gannett refused to sell the *Citizen* assets to Santa Monica Media, Lee remained committed to splitting the *Star*'s profits with Gannett.

ARGUMENT

In the Ninth Circuit, a plaintiff may obtain preliminary injunctive relief by showing either "(1) a likelihood of success on the merits and the possibility of irreparable injury; or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation, and the balance of hardships tips sharply in favor of the party seeking relief." *Marbled Murrelet v. Babbitt*, 83 F.3d 1068, 1073 (9th Cir. 1996).[3]

---

[3] The analysis for a temporary restraining order is "substantially identical." *See Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001); *see also Magnuson v. Akhter*, No. 08-2246, 2009 WL 185577, at *1 (D. Ariz. Jan. 27, 2009) (Murguia, J.) ("Temporary restraining orders are governed by the same standard applicable to preliminary

These formulations establish a "continuum" so that "the greater the relative hardship to the moving party, the less probability of success must be shown." *National Ctr. for Immigrants Rights v. INS*, 743 F.2d 1365, 1369 (9th Cir. 1984); *see also Immigrant Assistance Project v. INS*, 306 F.3d 842, 873 (9th Cir. 2002).

Denying an injunction would irreparably harm the public because shuttering the *Citizen*, as Gannett plans to do on **Saturday**, would eliminate one of Tucson's only two daily local newspapers and the quality competition in which those newspapers currently engage. It would also make the *Citizen* assets less attractive to potential buyers, which diminishes the chances that the newspaper might be resurrected. Defendants cannot show that requiring them to continue publishing the *Citizen*, as they have for many profitable years, would harm them severely enough to tip the balance of hardships in their favor. This Court, therefore, should award preliminary relief even if only fair grounds for litigation exist. *See Topanga Press v. Los Angeles*, 989 F.2d 1524, 1534 (9th Cir. 1993) (explaining that, "by definition," complex constitutional question presented fair grounds for litigation); *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1478 (9th Cir. 1997) ("Complex antitrust cases . . . invariably involve complicated questions . . . .").

I. PLAINTIFF IS LIKELY TO PROVE THE NEWSPAPER OWNERS HAVE VIOLATED THE ANTITRUST LAWS.

A. The Newspaper Owners' Agreement Violates Section One.

As alleged in the complaint, the Newspaper Owners' agreement to close the *Citizen* and share the profits from the *Star*'s continued operations violates both Section 1 of the Sherman Act and Arizona's Uniform State Antitrust Act. *See* 15 U.S.C. § 1 (2008); Ariz. Rev. Stat. Ann. § 44-1402 (2008).[4] *See* Compl. ¶¶ 15-18. A Section 1

---

injunctions.").

[4] This Memorandum focuses on federal law because Arizona courts generally interpret the state's Antitrust Act in harmony with the federal Sherman Act. *See Three Phoenix Co. v.*

claim has three elements: (1) the existence of an agreement among separate entities that (2) unreasonably restrains trade and (3) affects interstate or foreign commerce. *See Jack Russell Terrier Network v. Am. Kennel Club, Inc.*, 407 F.3d 1027, 1033 (9th Cir. 2005).

Gannett and Lee are separate entities[5] that have agreed to close the *Citizen* and share the profits generated by the monopoly *Star*. *See* Compl. ¶¶ 5, 7, 13. Their plan began to take shape during 2008 when they discussed closing the *Citizen* as a way to make more money. *See* Schmidt Dep. 59:2-68:10 (Ex. E); Ehrman Dep. 105:21-119:22 (Ex. F). On January 15, 2009, the Newspaper Owners committed in writing to split the *Star*'s profits after the *Citizen* was closed or sold. *See* January 15 Letter (Ex. G). Then Gannett rejected Santa Monica Media's $250,000 offer for the *Citizen* assets, even though Gannett has no plans to use those assets itself and instead will largely destroy their value by closing the *Citizen*. *See* Hadland Decl. ¶ 10 (Ex. J). It would have been irrational for Gannett to turn down cash in hand for assets that it would otherwise shutter, unless it expected that the *Star* (whose profits it agreed to split with Lee) would be more profitable as a monopoly daily local newspaper than if it faced competition from the *Citizen* in Santa Monica Media's hands. And Lee continued to acquiesce in the plan to split the *Star*'s monopoly profits even after Gannett refused to accept a significant sum for assets that it has no plans to use.

Pace Indus., 659 P.2d 1258, 1260 (Ariz. 1983) (relying on federal decisions interpreting Section 1 of the Sherman Act to construe the state "counterpart," § 44-1402).

[5] Gannett and Lee are distinct legal entities that are separately incorporated, owned, and operated. Nevertheless, they may contend that, as a matter of law, they should be treated as single entity because some aspects of their Tucson operations have been conducted jointly through TNI. *Cf. Texaco Inc. v. Dagher*, 547 U.S. 1, 6 (2006) (characterizing joint venture's setting of price as conduct "by a single entity . . . and not a pricing agreement between competing entities with respect to their competing products"). But Gannett and Lee – unlike the *Dagher* defendants – have not stopped competing altogether. Indeed, the NPA required that, despite the JOA, they continue to engage in editorial competition, and they admit that they have done so. *See infra* page 7; *see also United States v. Daily Gazette Co.*, 567 F. Supp. 2d 859, 868 (S.D.W. Va. 2008) ("The . . . unification of newspaper brands, or elimination of one daily in favor of the other, appears to present concerns not contemplated by *Dagher*.").

As to the second element, courts typically assess a restraint's unreasonableness by "review[ing] all the facts, including the precise harms alleged to the competitive markets, and the legitimate justifications provided for the challenged practice, and [then] determin[ing] whether the anti-competitive aspects of the challenged practice outweigh its pro-competitive effects." *Paladin Assocs. v. Montana Power Co.*, 328 F.3d 1145, 1156 (9th Cir. 2003). But when "an observer with even a rudimentary understanding of economics could conclude that the arrangements in question have an anti-competitive effect on customers and markets," a court may determine that the arrangement unreasonably restrains trade after only a "quick look." *California Dental Ass'n v. FTC*, 526 U.S. 756, 770 (1999).[6]

No more than a "quick look" is necessary to see that the Newspaper Owners' agreement to close the *Citizen* and share the resulting profits eliminates the quality competition that has been at the heart of their JOA for decades. Gannett's predecessor testified that "the Tucson public has benefited [*sic*] in all respects from the joint arrangement between the Citizen and the Star" because, under the JOA, the "two newspapers compete vigorously to provide the highest quality in news coverage, features, and opinion." *The Failing Newspaper Act: Hearings Before Subcomm. on Antitrust and Monopoly of the S. Comm. on the Judiciary*, 90th Cong. 7 (1967) (statement of William A. Small, Jr., then-Owner, *Tucson Daily Citizen*). In earlier litigation involving the Tucson JOA, this Court found that the newspapers "engaged in intense rivalry with each other in the composition of news and editorial material." *United States v. Citizen Publishing Co.*, 280 F. Supp. 978, 982 (D. Ariz. 1968), *aff'd*, 394 U.S. 131 (1969). And today, the Newspaper Owners continue to "compete

---

[6] Plaintiff needs not establish the boundaries of a relevant market to prevail on a "quick look" theory. *See FTC v. Indiana Federation of Dentists*, 476 U.S. 447, 460 (1986) ("[T]he Commission's failure to engage in detailed market analysis is not fatal to its finding of a violation of the Rule of Reason."); *Oltz v. Saint Peter's Community Hosp.*, 861 F.2d 1440, 1448 (9th Cir. 1988) ("Defining the market is not the aim of antitrust law; it merely aids the search for competitive injury.").

vigorously" for readers by investing in high-quality reporting. *See* TNI Homepage (Ex. K). As the *Citizen*'s editor recently explained, "what we do makes the Star better, the Star makes us better, and because of that, the community gets better information." *Tucson Citizen to Close Saturday – After 138 Years*, Editor & Publisher (Mar. 15, 2009) (Ex. L).

The Newspaper Owners' agreement to close the *Citizen* and share the *Star*'s monopoly profits threatens to deprive Tucson-area readers of one of their daily local newspaper choices and eliminate the quality competition between the newspapers. The agreement also will harm advertisers if, after the *Citizen* closes, TNI does not cut its advertising rates to reflect the loss of former *Citizen* readers who do not switch to the *Star*. Because the Newspaper Owners cannot prove that their agreement has any offsetting procompetitive benefits, these anticompetitive effects prove that their agreement unreasonably restrains trade in violation of Section 1.[7]

In a nearly identical case (where Gannett was one of the defendants), the Ninth Circuit affirmed entry of a preliminary injunction against implementation of an agreement between the owners of two Hawaii newspapers under which one of them would receive the same profits called for in their JOA even after shutting down its newspaper. *See Hawaii v. Gannett Pacific Corp.*, 99 F. Supp. 2d 1241 (D. Haw.), *aff'd*, 203 F.3d 832 (9th Cir. 1999) (table). The district court recognized that, despite the JOA, the newspapers engaged in "economic competition" and found that their owners' agreement "would deprive newspaper readers of [that] free and open competition in the sale of daily newspapers and their differing editorial and reportorial voices." *Hawaii*, 99 F. Supp. 2d at 1249-50. The court also found that the agreement had "no lawful justification" because it had the "effect of paying [one paper] not to publish for the remaining . . . years, as called for by the JOA." *Id.* at 1249.

---

[7] The third element of a Section 1 claim – substantial effect on interstate commerce – is satisfied because the *Citizen* buys and publishes stories from interstate news services and sells advertising to out-of-state customers. *See* Compl. ¶ 2.

In *Glen Holly Entm't v. Tektronix Inc.*, 343 F.3d 1000 (9th Cir. 2003), the Ninth Circuit concluded that a similar agreement to stop competing violated Section 1. Tektronix and Avid manufactured and sold digital film editing equipment until they agreed that Tektronix would stop manufacturing its own equipment and instead sell Avid's equipment exclusively. Plaintiff Digital Images, one of Tektronix's former customers, alleged that the agreement violated Section 1, but the district court dismissed the claim. The Ninth Circuit, however, reinstated the claim because the "Avid/Tektronix agreement detrimentally changed the market make-up and limited consumers' choice to one source of output," *id.* at 1010-11, and "there is *no* pro competitive aspect of the defendants' strategic alliance, none," *id.* at 1013. According to the court, an agreement "leaving only one product, no choices, and no competition in its wake" – that is, an agreement very much like the one at issue in this case – amounts to a "clear[] violation of the Sherman Act." *Id.* at 1013-14.

B. The Newspaper Owners Cannot Establish a Failing Company Defense.

The Newspaper Owners cannot excuse their anticompetitive agreement on the ground that the *Citizen* is a failing firm. One court has recognized that, when two newspaper owners in a JOA agree to close one of the papers, they may avoid antitrust liability by proving a "failing company" defense. *See Reilly v. Hearst Corp.*, 107 F. Supp. 2d 1192, 1203 (N.D. Cal. 2000). But to avail themselves of this defense, the Newspaper Owners must establish that "(1) one of the newspapers would be a failing company if operated outside the JOA; and (2) there are no alternative purchasers willing to operate the newspaper outside the JOA." *Id.* At all times, "[t]he burden of proving that the conditions of the failing company doctrine have been satisfied is on those who seek refuge under it." *Citizen Publishing Co. v. United States*, 394 U.S. 131, 138-39 (1969).

The Supreme Court has explained that the first element of the failing company defense requires proof that the supposedly failing firm's "resources . . . were so depleted and the prospect of rehabilitation so remote that it faced the grave probability of a

business failure." *Id.* at 137 (internal quotation marks omitted); *see also Reilly*, 107 F. Supp. 2d at 1203 (characterizing this standard as the "proper framework for analysis" of failing company defense in newspaper JOA context). To satisfy this demanding test, the Newspaper Owners would have to show that the "prospects of reorganiz[ing]" the *Citizen* through bankruptcy are "dim or nonexistent." *Citizen Publishing* 394 U.S. at 138. Here, they have offered no evidence to support a claim that the *Citizen* could not emerge from bankruptcy and operate successfully. To the contrary, the Newspaper Owners assert that a reorganized *Citizen* would be profitable. *See infra* note 7.

Additionally, the Newspaper Owners cannot prove the second element of the failing company defense because there are companies willing to purchase the *Citizen* assets and operate the *Citizen* outside TNI. For instance, Santa Monica Media bid $250,000, and it intends to compete with the *Star* based on price as well as quality. Hadland Decl. ¶¶ 10-11 (Ex. J). The presence of potential buyers shows that the *Citizen* is "presumably economically viable" and confirms that a "sale will be preferable to its closure because a competitor will be preserved rather than eliminated." *Reilly*, 107 F. Supp. 2d at 1205; *see also Citizen Publishing*, 394 U.S. at 138 ("[I]f another person or group could be interested, a unit in the competitive system would be preserved and not lost to monopoly power.").

The Newspaper Owners likely will argue that they are still entitled to a failing company defense because Santa Monica Media's $250,000 offer is unreasonably low. But Gannett plans to close the *Citizen* and receive nothing for the *Citizen* assets, which will rapidly lose their value after the newspaper closes. This plan demonstrates that the *Citizen* assets have little value to Gannett. Indeed, when a similar package of assets was sold in Hawaii, the buyer paid only $10,000 for them. *See* Asset Purchase Agreement § 1.4 (Ex. M). And another potential buyer was willing to purchase the *Citizen* assets for $300,000 payable over time, an amount roughly equivalent to Santa Monica Media's offer to pay $250,000 immediately. *See* Hamila Decl. ¶ 5 (Ex. N). In the face of this real-world evidence that Santa Monica Media's offer was not unreasonably low, the

Newspaper Owners cannot carry their burden of establishing a failing company defense.[8]

II. THE BALANCE OF HARDSHIPS AND THE PUBLIC INTEREST FAVOR GRANTING THE INJUNCTIVE RELIEF REQUESTED.

Unless this Court stops the impending closure of the *Citizen*, the people of Tucson will suffer irreparable harm. The *Citizen* will be lost. Its roughly 20,000 daily readers will be deprived of access to their preferred editorial voice. *See Hawaii*, 99 F. Supp. 2d at 1253 (finding that "no monetary amount will be able to compensate for the loss of [an] editorial and reportorial voice"). And Tucson residents will lose the benefits of quality competition between the *Citizen and* the *Star*. *See California v. American Stores Co.*, 872 F.2d 837, 844 (9th Cir. 1989) (recognizing that a "lessening of competition" is "precisely the kind of irreparable injury that injunctive relief . . . was intended to prevent"), *rev'd on other grounds*, 495 U.S. 271 (1990).

Without an injunction, it will be virtually impossible to resurrect the *Citizen* and restore it to its present level should Plaintiffs prevail after a trial on the merits. By that time, relationships with subscribers, employees, advertisers, distributors, and suppliers will be irreparably severed. *See* Hadland Decl. ¶ 15 (Ex. J); *see also Hawaii*, 99 F. Supp. 2d at 1254 ("[T]he economic demise of [a newspaper] will impair the ability of this Court to provide the relief requested . . . and will result in the silencing of competing news and editorial voices."); *FTC v. Warner Communications, Inc.*, 742 F.2d 1156, 1165 (9th Cir. 1984) (approving injunction when "a denial of a preliminary injunction would preclude effective relief").

In contrast, the Newspaper Owners will not be harmed significantly if they are required to keep operating the *Citizen*. The latest figures they have supplied show that,

---

[8] The Newspaper Owners assert that the *Citizen* assets are really worth $762,000, but their valuation methodology contains many serious errors, including a fatally flawed assumption – that the *Citizen* will continue to operate. Gannett itself has no plans to publish the *Citizen* after Saturday; it plans simply to close the newspaper and let the value of the *Citizen* assets dissipate. And Gannett refuses to sell the *Citizen* assets to potential buyers who would operate the newspaper.

even in recession year 2008, TNI made a profit of $16.5 million. TNI Operating Statement (Ex. D). There is thus good reason to think that TNI will continue to make money, even if required to continue publishing the *Citizen* pending a trial on the merits. *See Hawaii*, 99 F. Supp. 2d at 1254 (concluding that hardship to defendants of operating newspaper "pales" in comparison to harm to public from closure when newspaper owners "presented no evidence that they are not profitable overall"); *see also American Stores*, 872 F.2d at 844 (explaining that court "need not address [defendant's] arguments concerning the balance of hardships" when a plaintiff's "showing of likelihood of success on the merits and possibility of irreparable harm satisfies the prerequisites for granting a preliminary injunction").

An injunction preventing the *Citizen* from shutting down would advance the public interest. The Attorney General represents the public interest in antitrust litigation. *See United States v. Borden Co.*, 347 U.S. 514, 518 (1954); *see also California v. American Stores Co.*, 495 U.S. 271, 295 (1990) ("In a Government case the proof of the violation of law may itself establish sufficient public injury to warrant relief."); *Murcott v. Best Western Int'l, Inc.*, 9 P.3d 1088, 1096 (Ariz. Ct. App. 2000) (recognizing "the underlying purpose [of Arizona's Uniform State Antitrust Act] is to establish a 'public policy of first magnitude' in furthering a competitive economy"). In this case, keeping the *Citizen* alive preserves readers' access to an additional editorial viewpoint, and "there is a strong public interest in maintaining a newspaper press editorially and reportorially independent and competitive." *Hawaii*, 99 F. Supp. 2d at 1254; *see also Regents of Univ. of California v. American Broadcasting Cos.*, 747 F.2d 511, 521 (9th Cir. 1984) ("[T]he public interest is served by preserving the competitive influence of consumer preference . . . ."). Indeed, even the Newspaper Owners have recognized that "maintaining the separate identities, individuality and editorial and news freedom and integrity" of the *Citizen* and the *Star* serves "public interests." Joint Operating Agreement 2 (Ex. B).

CONCLUSION

For all these reasons, this Court should enjoin Defendants from closing or otherwise harming the *Citizen*.

Dated: May 15, 2009

TERRY GODDARD
ATTORNEY GENERAL

s/ Nancy M. Bonnell
Nancy M. Bonnell (AZ Bar No. 016382)
Susan V. Myers (AZ Bar No. 21949)
Office of the Attorney General
1275 West Washington Street
Phoenix, AZ 85028
Phone: (602) 542-7728
Fax: (602) 542-9088
E-mail: nancy.bonnell@azag.gov